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IN THE

Supreme Court of the United States

October Term, 1952
No. 478

CENTRAL FRUIT & VEGETABLE CO. and WEST TEXAS PRODUCE COMPANY,

Petitioners,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF CALIFORNIA, RAYMOND M. CRANE, RED LION PACKING COMPANY, and JOHN C. KAZANJIAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice Fred M. Vinson and the Honorable Associate Justices of the Supreme Court of the United States:

The petitioners, Central Fruit & Vegetable Co. and West Texas Produce Company, respectfully petition this Honorable Court for a writ of certiorari directed to the United States Court of Appeals for the Ninth Circuit, and in support of such petition, represent as follows:

Summary Statement of Matters Involved.

This case involves a most important aspect of the appellate provisions of the Perishable Agricultural Commodities Act, Title 7, United States Code, Section 499g. Succinctly stating the facts, petitioners purchased grapes from a grower, the sale of which grapes had been confirmed by a broker in behalf of such grower. Upon the refusal of the grower to deliver the grapes, petitioners filed a complaint with the Secretary of Agriculture under the provisions of the Perishable Agricultural Commodities Act, charging both the grower and the broker with violation of Section 2 of the said Act. (7 United States Code, Sec. 499b.) [R. 16-32.] After hearing the evidence, the Secretary of Agriculture made an order dismissing the complaint as to the broker, and ordering the grower to pay reparation damages to petitioners totalling $16,-245.41. [R. 41-65.] The grower filed notice of appeal as to the entire order, serving all parties, including the broker. [R. 3-5.] The appeal was docketed in the United States District Court for the Southern District of California, Central Division. In the District Court, proceedings were conducted by *trial de novo,* and participation was by all parties, and concerned all issues below. The broker not only appeared in the District Court as a party defendant, but filed an amended answer. [R. 64-69.] At no time during any stage of the proceedings herein did the broker ever contend that the order of dismissal as against him by the Secretary of Agriculture had become final, or that the rights of petitioners to relief against the broker had been waived.

The decision of the District Court consisted of a judgment against petitioners in favor of both defendants.

[R. 84-87.] An appeal was thereupon taken by petitioners to the United States Court of Appeals for the Ninth Circuit. [R. 109.] The decision of the Court of Appeals sustained the District Court with respect to the dismissal against the defendant grower. [R. 490-499.] The Court of Appeals also affirmed the judgment of dismissal in favor of the defendant broker, but based the same not upon the merits but *strictly upon the ground that petitioners had waived all rights of recovery against the broker by having failed to cross-appeal to the District Court from the order of the Secretary of Agriculture dismissing the complaint against said broker.* It is a fair inference from the court's opinion that, in the absence of such alleged waiver, it would have ordered judgment against the broker, the court having cited with approval the case of *Joseph Denunzio Fruit Co. v. Crane,* 79 Fed. Supp. 962, a companion case which arose from the same transaction involving the same defendants but a different complainant.

The decision of the Court of Appeals with respect to such waiver was made *sua sponte* and came as a complete surprise to the parties, all of whom had assumed that a *trial de novo* in the District Court on appeal from a reparation order of the Secretary of Agriculture had the effect of reinitiating the entire proceeding in the District Court and that cross-appeals were rendered unnecessary once any one of the parties had initiated an appeal from the order in question.

Involved in this case, also, is an obvious and dangerous departure by the Court of Appeals from the well-settled law of the State of California. Petitioners' case was based upon a series of written communications, all of

them clear and unambiguous. No finding of ambiguity or uncertainty had been made by the Secretary of Agriculture or by the District Court or by the Court of Appeals. Petitioners' case was based upon contractual liability as clearly evidenced by such written instruments. The Court of Appeals, in its opinion, quotes excerpts from the language of some of these documents, and then "interprets" such language so as to vary and modify the evident meaning thereof, thus enabling it to arrive at the conclusion that a binding contract had not been reached by the parties. In doing so, while the Court of Appeals has not expressly announced that it does not follow the fundamental rule that courts should not disturb otherwise unambiguous written instruments, the result accomplished by said court clearly evidences a failure to be governed by the law of the State of California in such matters. Such result constitutes a precedent which can well disturb the traffic of business intercourse by creating doubt in the minds of contracting parties as to whether they can safely rely on unequivocal written contractual commitments.

This Court Has Jurisdiction.

This case involves "an important question of federal law, which has not been, but should be, settled by this Court" [Supreme Court Rule 38, par. (5)(b)].

The Secretary of Agriculture derived his jurisdiction from the provisions of the Perishable Agricultural Commodities Act, Title 7, United States Code, Section 499f(a). Thomas J. Flavin, Judicial Officer for the Secretary of

Agriculture, the officer who issued the reparation order in this case, acted pursuant to powers delegated to him by the Secretary of Agriculture under authority of Title 5, United States Code, Sections 516a-516-c. (Vol. 10, Federal Register, p. 13769.)

The United States District Court for the Southern District of California was vested with jurisdiction on appeal by virtue of the provisions of Title 7, United States Code, Section 499g(c).

The jurisdiction of the Court of Appeals for the Ninth Circuit was derived from the provisions of Title 28, United States Code, Section 1291.

The jurisdiction of this court to review this case is provided by Title 28, United States Code, Section 1254.

The Questions Presented.

1. Is a *trial de novo* in the United States District Court which arises from appeal of a reparation order of the Secretary of Agriculture under the provisions of the Perishable Agricultural Commodities Act limited merely to issues affecting only the appealing party, or does it present for determination by the District Court all matters pertaining to all parties to the original proceeding?

2. May an appellate court disregard local state law and determine the contractual rights and obligations of parties litigant by judicial interpretation of written instruments, contradicting the plain and evident meaning of ambiguous written documents?

Reasons Relied Upon for Allowance of Writ.

The decision of the Court of Appeals which limits the scope of review on appeal from a reparation order of the Secretary of Agriculture, involves an important question of federal law which has not been, but should be, settled by this court.

Such decision is in probable conflict with applicable decisions of this court in cases arising from statutes similar to the Perishable Agricultural Commodities Act. It also is in probable conflict with the principles expressed by other courts of appeal for other circuits construing such act, and which indicate a much broader scope of appeal than that determined by the decision of the Court of Appeals hereunder.

The decision of the Court of Appeals, which determines the merits of the litigation by varying the evident and plain meaning of unambiguous written instruments, constitutes a decision of an important question of local law in a way probably in conflict with applicable local decisions.

Respectfully submitted,

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Of Counsel:

HARRY A. PINES,

ADELE WALSH.

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ASSOCIATED FRUIT DISTRIBUTORS OF CALIFORNIA, RAYMOND M. CRANE, RED LION PACKING COMPANY, and JOHN C. KAZANJIAN,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice Fred M. Vinson and the Honorable Associate Justices of the Supreme Court of the United States:

The Opinion Below.

Neither the opinion of the Court of Appeals for the Ninth Circuit nor the order denying the petition for rehearing have yet been reported. They appear in full in the record. [R. 490 and 500.]

Jurisdiction.

The jurisdiction of this court is invoked under the provisions of Title 28, United States Code, Section 1254. Judgment was rendered in this case by the United States Court of Appeals on September 2, 1952. On September 30, 1952, a petition for rehearing was filed with the Court of Appeals by petitioners. On October 16, 1952, an order was made by the Court of Appeals denying the said petition for rehearing.

Statement of the Facts.

The undisputed facts of this case are evidenced by a series of written communications and instruments, a chronological text of which is contained in an appendix to this brief. Petitioners have contended that the documentary evidence herein referred to entitled petitioners to a judgment against John C. Kazanjian, also known as Red Lion Packing Company, a grower of grapes, in whose behalf a sale of ten carloads of such grapes had been confirmed to petitioners. The confirmation to petitioners was by Raymond M. Crane, also known as Associated Fruit Distributors of California, a licensed broker, who advised petitioners that the sale of such grapes from Kazanjian to petitioners had been confirmed by Kazanjian. [R. 25.]

Section 2 of the Perishable Agricultural Commodities Act (7 U. S. C., Sec. 499b) makes the seller of perishable agricultural commodities in interstate commerce liable to a buyer for failure to fulfill a contract, and makes

a licensed broker liable for an intentional misrepresentation or omission of duty.

"Section 499b. Unfair conduct; what constitutes

"It shall be unlawful in or in connection with any transaction in interstate or foreign commerce— * * *

"(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer; * * *

"(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; * * *"

Kazanjian testified that he had not authorized Crane to confirm the sale, although the written evidence includes a telegram from Kazanjian to Crane in which he stated that such sale was satisfactory, which telegram was in reply to a telegram to him from Crane that

Crane had sold the grapes in question for Kazanjian's account. [R. 453-454.] It is clear that petitioners were entitled to recover their loss from Kazanjian if the confirmation by Crane to petitioners was authorized by Kazanjian. It also appears that if it were found that such confirmation by Crane was without authority from Kazanjian, Crane is liable to petitioners because of the untruthful representation that such confirmation had been secured.

It will be noted that in its opinion in this case, the court cited with approval the case of *Joseph Denunzio Fruit Co. v. Crane* (D. C. S. D. Cal.), 79 Fed. Supp 962, 89 Fed. Supp. 962 (9 Cir.), 188 F. 2d 569, which arose from the same offering telegram and which involved the confirmation by Crane to one Joseph Denunzio of several carloads of the same grapes. In the *Denunzio* case, it was determined that Kazanjian's liability had not been established, and that therefore Crane, having presumably acted without authority, was liable to the purchaser to whom he had confirmed the sale of the fruit.

It is a necessary corollary of such reasoning, that in this case a judgment should have been rendered against Crane, if the appellate court was satisfied that the evidence was insufficient to bind Kazanjian to the contract. The Court of Appeals, however, denied such relief to petitioners, basing such denial solely upon the ground that petitioners had lost their rights to relief against Crane by having failed to appeal from the order of the Secretary of Agriculture which awarded damages against Kazanjian but dismissed the proceedings as to Crane.

In seeking this review by certiorari, petitioners also are urging an examination of the decision of the Court

of Appeals on its merits. The petitioners believe that upon examination of the record, this Honorable Court will be satisfied that the Court of Appeals has established a dangerous precedent in assuming the extrajudicial function of varying and modifying the clear intent of unambiguous written documents. In doing so, the court has failed to follow the well-established local law, and has declared law which, if permitted to stand, will serve only to shake the confidence of contracting parties in the integrity of unambiguous commitments. Tersely stated, the Court of Appeals has taken such simple language as "have sold for your account" and has, without reason, construed it as meaning something other than that which it clearly states. The appendix hereto contains a chronological account of the text of the written communications herein. We believe it sufficient to state that an examination of the communications will make it apparent that the Court of Appeals has exceeded the judicial function by rewriting the contracts of private individuals.

Errors Relied Upon.

The United States Court of Appeals erred in holding that petitioners waived and relinquished their right to relief against Crane by not joining in or filing an additional appeal from the order of the Secretary of Agriculture which dismissed against Crane and awarded damages against Kazanjian.

The Court of Appeals further erred in engaging in judicial construction and modification of unambiguous written documents.

ARGUMENT.

I.

Section 7 of the Perishable Agricultural Commodities Act Clearly Contemplates That Proceedings on an Appeal to the District Court Be Conducted as a Trial Anew of the Entire Controversy.

Section 499g(c) of Title 7 U. S. C. A. reads as follows:

"(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held: *Provided,* That in cases handled without a hearing in accordance with paragraphs (c) and (d) of section 499f of this title or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the party complained against is located. Such appeal shall be perfected by the filing of a notice thereof together with a petition in duplicate which shall recite prior proceedings before the Secretary, and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with the clerk of said court with proof of service thereof upon the adverse party, together with a bond in double the amount of the reparation award conditioned upon the payment of the judgment entered by the court plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together

with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court; As amended May 14, 1940, c. 196, 54 Stat. 214."

This Honorable Court has not on previous occasion had the opportunity of passing upon the limitations and scope of such appellate proceedings.

None of the recorded cases construing the foregoing statutory provision have involved the precise question as to whether, if one of the parties has taken an appeal from a reparation order issued under the Perishable Agricultural Commodities Act, it is necessary for other parties aggrieved thereby, also to appeal in order to assert their rights in the *trial de novo* on appeal.

The cases which have passed upon this section with respect to its other appellate aspects clearly indicate that the entire controversy, and all issues, are presented anew to the district court as an original proceeding.

The Court of Appeals for the Tenth Circuit, in the case of *Spano v. Western Fruit Growers, Inc.*, 83 F. 2d 150, at page 152, construes this statute as calling for:

> "* * * a trial anew of the entire controversy, including the hearing of evidence as though no previous action had been taken."

This broad view has been cited with approval in the following cases:

> *American Fruit Growers v. S. T. Runzo,* 95 Fed. Supp. 842;
>
> *Joseph Denunzio Fruit Co. v. Crane,* 79 Fed. Supp. 117.

In delineating legislative intent from the language of the statute, we direct attention to the fact that it requires the Secretary of Agriculture to transmit to the Clerk of the District Court "a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of *the pleadings upon which the case was heard and submitted to the Secretary.*" This indicates that the record is to be a complete record, and cover all of the matters "upon which the case was heard and submitted to the Secretary." The statute further provides:

> "Such suit in the district court shall be a trial *de novo* and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be *prima-facie* evidence of the facts therein stated. * * * Such petition and pleadings certified by the Secretary

upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial *de novo* shall proceed subject to any amendment allowed in that court;"

Thus Congress directed that the petition and pleadings upon which the decision was made by the Secretary, not merely the petition or pleadings affecting the appealing party, shall constitute the pleadings upon which the trial *de novo* is to be held. We believe that this language indicates a clear intent on the part of Congress to provide for a reinitiation of the entire proceedings, save only that upon such retrial the burden of proof shall shift to the appellant to overcome the *prima facie* effect of the findings of fact and order, or orders, of the Secretary of Agriculture.

II.

The Limited Construction by the Court of Appeals Respecting Trial De Novo on Appeal Under the Perishable Agricultural Commodities Act Conflicts With Principles Enunciated by This Court in Situations Involving Appeals From Similar Administrative Orders, as Well as From Analogous Appellate Procedure in Admiralty Cases.

Particularly explanatory of the law governing an appeal by *trial de novo* from an administrative order is the early United States Supreme Court decision of *Grisar v. McDowell,* 6 Wall. 363, 73 U. S. 863, wherein the Supreme Court cautioned that in this type of an appeal one should not be misled by the term "appeal," for, in effect, it is more of a transfer of jurisdiction than an

appeal. That case involved conflicting claims of the United States Government and the City of San Francisco to certain land allotments. Both parties appealed from a decision of a federal board of land commissioners, thus giving rise to a *trial de novo* in the District Court. Prior to trial in the District Court, the United States had *dismissed* its appeal. The Supreme Court held that, despite such dismissal, the United States was not precluded from urging every right and contention that was available to it before the administrative board.

Analogy is to be found, also, in *de novo* proceedings which follow an appeal from admiralty decisions of the District Court. The Supreme Court, in the case of *Standard Oil Co. of New Jersey v. Southern Pacific Company,* 45 S. Ct. 465, 467; 268 U. S. 146, said:

> "On appeal in admiralty, there is a trial *de novo.* The whole case was opened in the Circuit Court of Appeals by the appeal of the Southern Pacific Company, *as much as it would have been if the Director General had also appealed.*" (Emphasis supplied.)

In *Reid v. Fargo,* 241 U. S. 544, 36 S. Ct. 712, the Supreme Court held that on the *de novo* appeal in admiralty, recovery may be had against a party who was dismissed by virtue of a decree which was not appealed from. There exists no reasonable basis for assuming that a more limited form of *trial de novo* was contemplated by Congress in the enactment of Title 7, United States Code, Section 499g(c).

III.

The Decision of the Court of Appeals Does Not Follow Local Law and Violates Fundamental Law of Contracts by Indulging in the Modification of Otherwise Plain and Unambiguous Language.

No more effective argument can be presented than that which is evident from the opinion of the Court of Appeals by comparison of the language construed, and the interpretation given thereto by the court. For Crane to have said to Kazanjian "HAVE SOLD FOR YOUR ACCOUNT," is plain, and unambiguous. For the Court of Appeals to interpret such language as meaning that "subject to confirmation, Crane, for Kazanjian's account, had made contracts with buyers (not named or identified), whereby the buyers had contracted to buy from Kazanjian and Crane, for Kazanjian's account, had contracted to sell to the buyers," is either a more elaborate way of saying that Crane had sold for Kazanjian's account, or it is a completely ambiguous restatement of an otherwise simple and succinct statement. When Kazanjian, on October 4, 1944, replied, "FIFTEEN CARS STORAGE US ONE EMPERORS DECEMBER 10TH CONVERSION SATISFACTORY," he was clearly and unambiguously stating that he was satisfied by the sale which Crane had reported to him in his October 3, 1944, telegram respecting 15 cars of grapes. For the Court of Appeals then to paraphrase this language in its opinion and to hold that by it, it was intended by both Crane and Kazanjian to mean that Kazanjian "was still willing to make contracts with buyers (not named or identified), whereby the buyers would contract to buy from Kazanjian, and Kazanjian would contract to sell to the buyers," is clearly a conversion of simple clarity into compound ambiguity.

That neither Crane nor Kazanjian understood these telegrams within the interpretation ascribed to them by the Court of Appeals is clear from the *very first communication* thereafter by Crane when, on October 10, 1944, he wired Margules, "SHIPPER REDLION TAKES VIEW ACCOUNT CEILING LIFTED ANY CONTRACTS EMPERORS VOIDED." [R. 481.] (Also see appendix hereto covering the communications in chronology.) He didn't say that he or Kazanjian had failed to consummate the sale to appellants. He said that Kazanjian, his principal, felt that the lifting of the ceiling prices had the effect of *voiding such contracts.* Again, on October 16, in the *last communication* of the parties to this proceeding, Crane wired to Margules "AGAIN TALKED REDLION. THEY STATE DEFINITELY UNWILLING ABIDE ANY SALES MADE WHERE CEILING DEFINITE CONSIDERATION." [R. 482.] Here again Crane belies the interpretation of the Court of Appeals by written proof of his principal's instructions, disclosing both Crane's and Kazanjian's intention that, despite the SALES ALREADY MADE, the ceiling price having been a definite consideration, the seller refused to abide by his contract.

Manifold are the decisions of the courts of California which provide that a contract is to be construed within the four corners of the written instruments, and that resort to extraneous evidence is only permitted in cases of uncertainty or ambiguity.

Toms v. Hellman, 115 Cal. App. 74, 1 P. 2d 31;

Security-First Nat. T. & S. Bank v. Loftus, 129 Cal. App. 650, 19 P. 2d 297;

Tillis v. Western Fruit Growers, Inc., 44 Cal. App. 2d 826, 113 P. 2d 267.

Conclusion.

If the decision of the Court of Appeals is permitted to stand, it will result in untold confusion with respect to presently pending cases on appeal from administrative orders where the parties, as in this case, relied upon long established practice that this type of *trial de novo* involves a new trial of the entire proceeding and involves all of the parties that appeared below. It will establish a precedent in conflict with the evident intent of Congress to permit a completely new trial upon the entire record below. Inasmuch as review of Section 499g(c) of Title 7, United States Code, is a matter of first instance to this Honorable Court, it is particularly important that this Honorable Court grant certiorari and clarify the scope of this type of appeal. In requesting certiorari, we respectfully urge that the writ be not limited to the jurisdictional question alone, but that such writ permit a reconsideration and re-examination of the decision on the merits of the case, thus also to permit review of what appears to be a grave and dangerous departure by the Court of Appeals from a fundamental principle of the local law of contract.

Respectfully submitted,

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